IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 15408 of 2007(H)

PETITIONERS:

1. N. SUKUMARAN,BINZY NIVAS, POOVATHUR,
   KARIMKUTTIKARA P.O.,VAMANAPURAM,
   THIRUVANANTHAPURAM-695 606.

2. S. SUNIL KUMAR, DO. DO.

BY ADV. SRI.B.RAGUNATHAN
SRI.V.V.MATHEW

RESPONDENTS:

1. SUPERINTENDENT OF POLICE,
   THIRUVANANTHAPURAM RURAL, KOWDIAR,
   THIRUVANANTHAPURAM-695 003.

2. DEPUTY SUPERINTENDENT OF POLICE,
   THIRUVANANTHAPURAM RURAL, ATTINGAL,
   THIRUVANANTHAPURAM-695 101.

3. CIRCLE INSPECTOR OF POLICE,
   VENJARAMOODU, THIRUVANANTHAPURAM-695 607.

4. SUB INSPECTOR OF POLICE, VENJARAMOODU
   POLICE STATION, VENJARAMOODU,
   THIRUVANANTHAPURAM-695 607.

5. N. PUSHPARAJAN, PULLIPACHA VEEDU,
EETTYMOODU, KARUMKUTTIKARA P.O.
VAMANAPURAM, THIRUVANANTHAPURAM-695 606.

6. CHANDRALEKHA, D/O. N.PUSHPARAJAN,
NEERAJA, VENNIYODE P.O., CHERINNIYUR,
VARKALA-695 142.

7. SOBHALEKHA, D/O.N.PUSHPARAJAN,
PLAVILA VEEDU, KODUVAZHANNUR P.O.,
CHIRAYINKEEZHU-695 612.

8. BINDULEKHA, D/O.N.PUSHPARAJAN,
PULIPACHA VEEDU, EETIMOODU, KARUMKUTTIKARA,
VAMANAPURAM, THIRUVANANTHAPURAM-695 606.

9. LEKHA, D/O.N.PUSHPARAJAN, DO. DO.

BY GOVT. PLEADER SRI.P.A.SALIM
BY ADV. SRI.P.C.CHACKO(PARATHANAM)
SMT.ASHA CHACKO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 15408/07

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE DOCUMENT NO.523/98 DT. 2.3.98

EXT. P2 TRUE COPY OF THE DOCUMENT NO.1530/06 DT. 26.6.06

EXT. P3 TRUE COPY OF THE ORDER DT. 21.3.07 IN IA 505/07 IN OS 66/07

EXT. P4 TRUE COPY OF THE COMPLAINT DT. 9.5.07

EXT. P5 TRUE COPY OF TAX RECEIPT NO.0842823 DT. 11.2.04

EXT. P6 TRUE COPY OF TAX RECEIPT NO.0016031 DT. 30.1.07

EXT. P7 TRUE COPY OF TAX RECEIPT NO.0016043 DT. 30.1.07

EXT. P8 TRUE COPY OF TAX RECEIPT NO.0016044 DT. 30.1.07

EXT. P9 TRUE COPY OF REPORT NO.432/07 DT. 28.5.07

RESPONDENT'S EXHIBITS:

EXT.R5(a) TRUE COPY OF LAND TAX RECEIPT DT. 25.7.06 ISSUED TO RESPONDENT 6 AND OTHER BY THE VAMANAPURAM VILLAGE OFFICE

EXT.R5(b) TRUE PHOTOGRAPHS SHOWING CEREMONY OF THE LORAD GANAPATY TEMPLE

EXT.R5(c) TRUE COPY OF THE PETITION CRL.M.C.1592/07

EXT.R5(d) TRUE COPY OF SUIT IN OS 66/07 PENDING BEFORE THE MUNSIFF'S COURT, NEDUMANGADU DT. 1.2.07

EXT.R5(e) TRUE COPY OF THE MCA 15/07 FILED BEFORE THE SUB COURT, NEDUMANGADU

EXT.R5(f) TRUE COPY OF THE ORDER DT. 24.7.07 PASSED BY THE DISTRICT COLLECTOR TO THE 5TH RESPONDENT

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 15408 of 2007 H

JUDGMENT

Balakrishnan Nair, J.

The first petitioner is the father of the second petitioner. Under Exhibit P1 sale deed, they purchased 59 cents of land from the fifth respondent. Out of the said 59 cents, a portion, having an extent of 13.5 cents, is shown as surrendered to the Panchayat. Even though such a recital is there in the sale deed, the petitioners submit that the entire property has been sold to them.

2. While so, the fifth respondent executed Exhibit P2 settlement deed settling the aforementioned 13.5 cents in favour of his daughters-respondents 6 to 9. The said respondents have filed a suit before the Munsiff's Court, Nedumangadu seeking an injunction against the

petitioners and another son of the first petitioner from entering into the said property. The interlocutory application filed in the said suit was dismissed by Exhibit P3 order of the learned Munsiff. The petitioners point out that in the said order, there is a specific finding that Exhibit A1 therein, which is Exhibit P2 herein, is a sham document. Now, the petitioners want to construct a new Temple in the undisputed part of their property, that is, excluding 13.5 cents of land. But, respondents 5 to 9 are causing obstruction to the same. So, they have filed Exhibit P4 representation before the police, seeking necessary protection to construct the Temple.

3. The learned Government Pleader, upon instructions, submitted that the dispute between the parties is concerning the attempt of the petitioners to shift the existing Temple to a new place.

4. Respondents 5 to 9 have filed a counter affidavit. The said respondents submitted that against Exhibit P3 order, they have already filed C.M.A.No.15/07 before the Sub Court, Nedumangadu. They also submitted that the petitioners want to demolish the existing Temple and construct a new one. The property of the petitioners and that of the respondents are remaining without demarcation. So, they are opposing the attempt of the petitioners to construct a new Temple.

5. The petitioners have filed a reply affidavit dealing with the averments in the counter affidavit of the party respondents. It is submitted that they have no intention, whatsoever, to demolish the existing Temple or trespass into the disputed property. The learned counsel also submits that the submission made by the learned Government Pleader that the petitioners want to shift the existing Temple is not correct. They want to construct a new

Temple, it is submitted.

6. If anybody is causing obstruction to the construction of a new Temple, it will amount to infringement of their civil right. In that event, the petitioners may move the competent civil court and get appropriate orders. If such interim order is violated by any of the respondents, the petitioners may move the civil court and the civil court has ample power to address the police also to enforce its order. In view of the above alternate and efficacious remedy available to the petitioners, this writ petition need not be entertained. Further, we feel, having regard to the nature of the civil dispute between the parties, the police should not be asked to interfere in the matter. They may act as a bull in a china shop and break the rights of the parties, including that of the petitioners in that process. We are of the view that the police do not have any duty to interfere in these types of civil disputes.

Therefore, the writ petition is dismissed without prejudice to the contentions of both parties and their rights to move appropriate civil court for appropriate reliefs.

(K.Balakrishnan Nair, Judge)

14th November, 2007

(K.P.Balachandran, Judge)

tkv